

Contract Part B



Department Of Executive Services
Finance And Business Operations Division
Procurement And Contract Services Section
206-684-1681 TTY Relay: 711

Contract Title: **Software Escrow Services**

RFP Number: **04-036 AC**

Buyer: Allen Cantara, Allen.Cantara@Metrokc.Gov, 206-263-5246

Contract Number: _____

Contractor: _____

Federal Tax ID: _____

Requesting Dept.: _____

Amount: _____

Fund Source: _____

Duration: _____

To: _____

Work Provided: _____

TABLE OF CONTENTS

COVER - CONTRACT	1
SECTION 1 - Definitions And Interpretation	4
SECTION 2 - Appointment Of Escrow Agent	5
SECTION 3 - Deposit And Storage Of Escrowed Items.....	5
SECTION 4 - Optional Verification Services.....	6
SECTION 5 - Confidentiality	7
SECTION 6 - Release Of Escrowed Items To Agencies.....	8
SECTION 7 - Payment	8
SECTION 8 - Insurance	9
SECTION 9 - Term And Termination.....	11
SECTION 10 -Force Majeure	12
SECTION 11 - Legal Relations.....	12
SECTION 12 -Rights Survive Bankruptcy.....	13
SECTION 13 -Notice	13
SECTION 14 -Successors And Assigns.....	13
SECTION 15 -Entire Agreement.....	13
SECTION 16 -Severability	13
SECTION 17 -Counterparts	13
Signature Page.....	14
Exhibit 1 – Definitions	15
Exhibit 2 – Materials To Be Deposited	19
Exhibit 3 – Description Of Deposit Materials	20
Exhibit 4 - Optional Verification Services	21
Exhibit 4, Attachment 1 – Summary Of Build Environment And Testbed Hardware	23
Exhibit 5 – Price Schedule	24
Exhibit 6 – Designated Contacts	25
Exhibit 7 – Supplemental Terms and Conditions.....	26

This Escrow Agreement

is made between the following parties on the latest date appearing on the execution page:

Contractor: ERG Transit Systems (USA) Inc.
1800 Sutter Street, Suite 900
Concord, CA 94520
(referred to hereinafter as "ERG")

Agencies: Central Puget Sound Regional Transit Authority, King County, Kitsap County Public Transportation Benefit Area, Pierce County Public Transportation Benefit Area, Snohomish County Public Transportation Benefit Area, City of Everett, and the State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division

ATTN: Contract Administrator, Regional Fare Coordination Project
201 S. Jackson St., KSC-TR-0415
Seattle, WA 98104-3856
(collectively referred to hereinafter as the "Agencies")

Escrow Agent:

(referred to hereinafter as "Escrow Agent" or "Contractor")

WHEREAS, on April 29, 2003, ERG and each of the Agencies entered into the Contract for the Development, Implementation, Operation and Maintenance of the Regional Fare Coordination System ("RFC Contract"); and

WHEREAS, pursuant to the RFC Contract, ERG has licensed or provided licenses to certain Intellectual Property to the Agencies; and

WHEREAS, pursuant to the RFC Contract, ERG is required to deposit with an escrow agent Escrowed Items as defined in the RFC Contract; and

WHEREAS, the Agencies have conducted a procurement process and selected the Escrow Agent to provide the escrow services required under the RFC Contract; and

WHEREAS, the purpose of this Agreement is to establish the respective roles and responsibilities of ERG, the Agencies and the Escrow Agent regarding said escrow services.

NOW, THEREFORE, in consideration of the following terms and conditions and other valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1 - Definitions And Interpretation

- 1-1** Unless Otherwise Provided In This Agreement, Capitalized Words In This Agreement Shall Have The Same Meanings As Are Specified In Exhibit 1, Which Is Incorporated By Reference Herein.
- 1-2** Unless Otherwise Provided In This Agreement, The Following Rules Of Interpretation Shall Apply:
- a. The Singular Includes The Plural, The Plural Includes The Singular, And Each Masculine, Feminine And Neuter Genders Includes The Other Genders;
 - b. If A Word Or Phrase Is Defined, Corresponding Words And Phrases Have Corresponding Definitions;
 - c. References To Statutes Or Regulations Include All Statutory Or Regulatory Provisions Consolidating, Amending Or Replacing The Statute Or Regulation Referred To;
 - d. All References To Dollars In This Agreement, And All Payments Made Under This Agreement, Shall Be In United States Dollars;
 - e. A Reference To An Obligation Includes A Warranty Or Representation And A Reference To A Failure To Observe Or Perform An Obligation Includes A Breach Of Warranty Or Representation;
 - f. The Words "Including," "Includes" And "Include" Shall Be Deemed To Be Followed By The Words "Without Limitation";
 - g. The Headings In This Agreement Are For Convenience Of Reference Purposes Only And Shall Not Be Deemed Part Of This Agreement Or Considered In Interpreting This Agreement.
- 1-3** The Parties Agree To The Supplemental Terms And Conditions Attached Hereto And Made Apart Hereof As Exhibit 7.
- 1-4** The Further Terms, Conditions And Covenants of the Contract are set forth in the following documents in order of precedence; Change Orders; Contract (Part B); RFP Addenda; Request for Proposals; Best and Final Offer; and the Proposal.

SECTION 2 - Appointment Of Escrow Agent

ERG and the Agencies hereby appoint the Escrow Agent to act as escrow agent in accordance with the provisions of this Agreement. The escrow agent warrants that it will retain all Escrowed Items in its facility located in _____ (must be in either Washington or California.)

SECTION 3 - Deposit And Storage Of Escrowed Items

- 3-1** Concurrent with the execution of this Agreement, ERG will deposit with the Escrow Agent any Escrowed Items then in existence. Thereafter, ERG will deposit Escrowed Items in accordance with the RFC Contract.
- 3-2** Each escrow deposit made by ERG shall consist of the following:
- a. Escrowed Items in electronic medium, or paper medium if not available in electronic medium, with a conspicuous label for identification of each document, magnetic tape, disk, or other tangible media upon which the Escrowed Items are written or stored; and
 - b. a listing, signed by ERG, of each such Escrowed Item by its label description, the type of media and the quantity, using the form attached to this Agreement as Exhibit 2.
- 3-3** ERG shall notify the Contract Administrator simultaneously with delivering a deposit to the Escrow Agent. Unless the Contract Administrator directs otherwise, ERG shall deliver all deposits to the Escrow Agent at the address provided in Exhibit 6, which is attached to this Agreement and incorporated herein. Unless the Contract Administrator directs otherwise, the manner of delivery shall be within the discretion of ERG but a delivery shall not be effective until the Escrow Agent confirms that it has received all Escrowed Items on the list, completed the requirements of Section 3.4 below, and until the Escrow Agent and such other Agency employee or Agency Consultant have successfully completed any Optional Verification Services prescribed by the Contract Administrator in accordance with Section 4 of this Agreement. For any deposit, the Contract Administrator may require that ERG deliver the Escrowed Items to representatives of the Escrow Agent and an Agency employee or Agency Consultant at ERG's facilities in Perth, Australia, and provide said representatives reasonable access to its facilities, computer software systems, and technical and support personnel to conduct the verification process.
- 3-4** Following receipt of the Escrowed Items, the Escrow Agent shall:
- a. Conduct a visual inspection of materials submitted, confirm the contents of the Escrowed Items with packing list information, visually check for damage of media, and confirm that the required listing of items and versions is provided.
 - b. Verify the readability of the media provided, and conduct a virus scan of the media using a commercial grade virus scanning program with a current list of known viruses.
 - c. Verify that filenames included in the electronic media correspond with the listing of items.
 - d. Provide a written deposit report, using the form attached to this Agreement as Exhibit 3 and incorporated herein, to the Contract Administrator and ERG confirming the contents and readability of the Escrowed Items, and identifying any exceptions, inconsistencies, or discrepancies.
- 3-5** In the event that one or more exceptions, inconsistencies or discrepancies are noted, the Escrow Agent shall notify ERG and the Contract Administrator and ERG shall correct same within thirty (30) days following receipt of notification.
- 3-6** The Escrow Agent shall maintain the Escrowed Items in a physically secure, controlled access location with fire and hazard protection at least equivalent to a bank safety deposit box. The Escrow Agent shall provide a listing of all personnel with access to the deposit, and shall provide such

information with each deposit report. Without limiting the generality of the confidentiality obligations set out in this Agreement the Escrowed Items must be maintained in accordance with the highest standards of leading companies in the field of escrow and verification services.

- 3-7** The Contract Administrator and/or ERG shall be permitted to inspect the Escrow Premises and verify controls upon two (2) business days prior written notice to all Parties to this Agreement.
- 3-8** During the term of this Agreement, and without limiting ERG's warranties under the RFC Contract, ERG represents as follows:
- a. With respect to all of the Escrowed Items and any materials provided for verification ("Test Materials"), (1) ERG has the right and authority to grant to Escrow Agent and the Agencies the rights as provided in this Agreement, and (2) the Escrow Agent's, the Agencies' or their contractors' use of any Escrowed Items or Test Materials is lawful and does not violate the rights of any third parties;
 - b. As of the effective date of this Agreement, the Escrowed Items are not the subject of any liens or encumbrances and will not become subject to any liens or encumbrances after the execution of this Agreement that will prohibit, limit, or alter the rights and obligations of the Escrow Agent under this Agreement;
 - c. The Escrowed Items are readable and useable in their current form or, if any portion of the Escrowed Items is encrypted, the decryption tools and decryption keys have also been deposited, as well as any instructions as may be necessary to duplicate the Escrowed Items including, but not limited to, the hardware and/or software needed.
- 3-9** The Escrow Agent shall provide to the Contract Administrator and ERG a report profiling the account history every six months.

SECTION 4 - Optional Verification Services

- 4-1** In accordance with the RFC Contract, the Contract Administrator may direct the Escrow Agent to conduct at ERG's facilities in Perth, Australia, Optional Verification Services on Escrowed Items required to be presented for deposit by ERG for the purpose of verifying their accuracy, completeness, sufficiency and quality. The verification processes that may be required of the Escrow Agent are further described in the Optional Verification Services attached to this Agreement as Exhibit 4 and incorporated herein. The Agencies may also, at their sole discretion, direct the Escrow Agent to conduct said Optional Verification Services elsewhere than at ERG's facilities in Perth, Australia.
- 4-2** ERG shall reasonably cooperate with the Escrow Agent and such other Agency employees or Agency Consultants as may accompany the Escrow Agent by providing, at no cost to the Agencies, its facilities, computer software systems, and technical and support personnel for verification whenever reasonably necessary. Provided, however, if Optional Verification Services are performed elsewhere than Perth, Australia, then ERG shall not be required to supply any facilities, computer software systems (other than Escrowed Items), hardware or technical or support personnel for such verification. If the Agencies elect to conduct verification after the Escrowed Items have been delivered to the Escrow Agent, then only the Escrow Agent will perform the verification. Any employees or consultants present at a verification shall not be provided a copy of the Escrowed Items.

SECTION 5 - Confidentiality

5-1 The Escrow Agent must:

- a. keep the Escrowed Items secret and confidential;
- b. keep the Escrowed Items in a secure place;
- c. clearly mark all documents created by it containing any information about any Escrowed Item as being confidential;
- d. comply with all reasonable instructions given to it by ERG regarding the Escrowed Items, as long as said instructions are in accordance with the terms of this Agreement;
- e. subject to clause 5.2(d) and except in the case of a release event under Section 6.1, not disclose the Escrowed Items to a third party without first obtaining the consent of ERG;
- f. immediately notify ERG if it becomes aware of any loss or unauthorized use, access, copying or disclosure of any Escrowed Item;
- g. take any steps reasonably requested by ERG to prevent or stop a breach or threatened breach of this Section 5; and
- h. ensure that any employee or contractor to whom any Escrowed Item is disclosed is bound by confidentiality obligations at least as protective of the Escrowed Items as the confidentiality provisions set forth in this Agreement.

5-2 The Escrow Agent:

- a. must only use the Escrowed Items for the purpose for which they were provided;
- b. must not use the Escrowed Items to the disadvantage of ERG;
- c. may create, or cause or permit to be created, a document which contains any Escrowed Item only if it is solely for the purpose for which it was provided;
- d. may only disclose the Escrowed Items to its employees or contractors who have a specific need to access them for the purpose for which they were provided; and
- e. must, if a person to whom it has disclosed any Escrowed Item is breaching the obligation of confidence in this Agreement, or it reasonably considers that it has or may do so, notify ERG of the name and address of that person.

5-3 The Escrow Agent shall not disclose the terms of this Agreement to any third party. If the Escrow Agent receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Escrowed Items, the Escrow Agent will notify the parties to this Agreement within 24 hours of receipt of the subpoena or other order unless prohibited by law. It shall be the responsibility of ERG and/or the Agencies to challenge any such order. The Escrow Agent will not be required to disobey any order from a court or other judicial tribunal.

5-4 The Escrow Agent shall ensure that no employee or contractor performing verification services under this Agreement performs any services for a provider of automated fare collection systems other than ERG during the period of the performance of the verification services and for a period of six months after completion of those services.

5-5 The Escrow Agent acknowledges that:

- a. disclosure of Escrowed Items in breach of this Agreement could cause considerable detriment to ERG; and
- b. damages may be inadequate compensation for breach of this Section 5 and, subject to the court's discretion, ERG may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of this Section 5.

5-6 The Escrow Agent must:

- a. inform its employees and contractors who have access to any Escrowed Items under Section 5.2(d) of their obligations under this Agreement;
- b. ensure that its employees and contractors observe the obligations of the Escrow Agent under this Agreement as if the employees and contractors were the Escrow Agent; and
- c. if requested by ERG procure written undertakings of confidentiality from its employees or contractors in favor of ERG, in a form similar to the undertakings in this Section 5.

SECTION 6 - Release Of Escrowed Items To Agencies

- 6-1** The Contract Administrator shall be entitled to receive the Escrowed Items from the Escrow Agent upon any of the following release events:
- a. ERG or its parent corporation assigns or transfers an interest, obligation, or benefit in the RFC Contract to a different entity, whether by sale of assets or stock, merger with another entity, assignment or novation, without the prior written consent of the Agencies;
 - b. ERG or its parent corporation becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition in bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or has wound up or liquidated its business voluntarily or otherwise;
 - c. the RFC Contract expires;
 - d. the RFC Contract is terminated by the Agencies for default; or
 - e. the RFC Contract is terminated by the Agencies for convenience.
- 6-2** The Escrow Agent shall notify ERG within two (2) business days following receipt of a demand from the Contract Administrator for release of the Escrowed Items.
- 6-3** Not later than ten (10) business days following receipt of the notification of a release demand, ERG may submit to the Escrow Agent a written representation that it does not believe a release event has occurred.
- 6-4** If a timely contrary representation is filed pursuant to Section 6.3 above, the Escrow Agent shall not release the Escrowed Items to the Contract Administrator unless subsequently ordered by a court or as agreed to by ERG and the Contract Administrator on behalf of the Agencies.
- If the Escrow Agent does not receive a timely contrary representation from ERG in accordance with Section 6.3, it shall immediately release the Escrowed Items to the Contract Administrator.

SECTION 7 - Payment

- 7-1** Except as may be provided in a separate cost sharing agreement with ERG, the Agencies shall be responsible for the payment of fees to the Escrow Agent for escrow and verification services provided under this Agreement. The prices to be paid by the Agencies are set forth in Exhibit 5, which is attached to this Agreement and incorporated herein.

SECTION 8 - Insurance

8-1 Evidence and Cancellation of Insurance

8.1.1 Prior to execution of this Agreement, the Escrow Agent shall file with the Contract Administrator and ERG evidence of insurance and endorsements from the insurer(s) certifying to the coverage of all insurance required herein. All evidence of insurance must be certified by a properly authorized officer, agent, general agent or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, the expiration date, and that the Contract Administrator and ERG will receive notice at least 45 Days prior to the effective date of any cancellation, lapse or material change in the policy. In the event of a cancellation or lapse in coverage, the Contractor shall provide replacement coverage in accordance with Section 8.7 of this Agreement.

8.1.2 The Escrow Agent shall, upon demand of the Contract Administrator or ERG, deliver to the Contract Administrator and ERG all such policies of insurance, and all endorsements and riders, and the receipts for payment of premiums thereon.

Failure to provide such insurance in a time-frame acceptable to the Contract Administrator on behalf of the Agencies shall enable the Agencies to terminate the Escrow Agent's work hereunder. Termination of this Agreement shall not relieve the Escrow Agent from its insurance obligations hereunder.

8-2 General Insurance Requirements

The Escrow Agent shall obtain and maintain the minimum insurance set forth below. By requiring such minimum insurance, the Agencies shall not be deemed or construed to have assessed the risks that may be applicable to the Escrow Agent under this Agreement. The Escrow Agent shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained with this provision shall affect and/or alter the application of any other provision contained with this Agreement.

For all coverages:

1. Each insurance policy shall be written on an "occurrence" form; excepting that insurance for professional liability, errors and omissions when required, may be acceptable on a "claims made" form subject to the approval of the Contract Administrator on behalf of the Agencies.
2. If professional liability, errors and omissions coverage is approved and purchased on a "Claims made" basis, the Escrow Agent warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement.

8-3 Minimum Scope of Insurance

Coverage shall be at least as broad as:

- a. General Liability
Insurance Services Office form number (CG 00 01 Ed. 11-88) covering COMMERCIAL GENERAL LIABILITY.

- b. Automobile Liability
Insurance Services Office form number (CA 00 01 Ed. 12-90) covering BUSINESS AUTO COVERAGE, symbol 1 “any auto”; or the combination of symbols 2, 8 and 9.
- c. Professional Liability
Professional Liability, Errors and Omissions coverage shall be provided. Professional Liability coverage shall be endorsed to include professional services rendered under this Agreement to include liabilities arising out of:
 - 1. escrow and media verification
 - 2. software compilation
 - 3. software execution and testing
- d. Workers’ Compensation
Workers’ Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or “Other States” State Law.
- e. Employers Liability or “Stop Gap”:
The protection Provided by the Workers Compensation Policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection Provided by the “Stop Gap” endorsement to the General Liability policy.

8-4 Minimum Limits of Insurance

The Escrow Agent shall maintain limits no less than, for:

- a. General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, Personal injury and property damage, and for those policies with aggregate limits, a \$2,000,000 aggregate limit.
- b. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- c. Professional Liability, Errors and Omissions: \$5,000,000.
- d. Workers’ Compensation: Statutory requirements of the state of residency.
- e. Employers Liability Stop Gap: \$1,000,000.

8-5 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the Contract Administrator. The deductible and/or self-insured retention of the policies shall not limit or apply to the Escrow Agent’s liability to the Agencies and shall be the sole responsibility of the Escrow Agent.

8-6 Other Insurance Provisions

The insurance policies required in this Agreement are to contain, or be endorsed to contain the following provisions:

- a. General Liability Policy:
 - 1. The Agencies, their officers, officials, employees and agents, and ERG, are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Escrow Agent under this Agreement.
 - 2. To the extent of the Escrow Agent’s negligence, the Escrow Agent’s insurance coverage shall be primary insurance as respects the Agencies, their officers, officials, employees and agents, and ERG. Any insurance and/or self-insurance maintained by the Agencies, their officers, officials, employees or agents, or by ERG, shall not contribute with the insurance or benefit the Escrow Agent in any way.

3. The Escrow Agent's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

8-7 Acceptability of Insurers

Unless otherwise approved by the Contract Administrator:

- a. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

If at any time one of the foregoing policies fails to meet the minimum scope and limits required above, the Escrow Agent shall, upon notice to that effect from the Contract Administrator, promptly obtain a new policy, and shall submit the same to the Contract Administrator, with the appropriate certificates and endorsements, for approval.

8-8 Subcontractors

The Escrow Agent shall include any and all subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. Insurance coverages provided by subcontractors as evidence of compliance with the insurance requirements of this Agreement shall be subject to all of the requirements stated herein.

8-9 Work Site Safety

The Escrow Agent shall have the "right to control" and bear the sole responsibility for the job site conditions, and job site safety. The Escrow Agent shall comply with all applicable federal, state and local safety regulations governing the job site, employees and subcontractors. The Escrow Agent shall be responsible for the subcontractor's compliance with these provisions.

SECTION 9 - Term And Termination

- 9-1 The initial term of this Agreement is for a period of one (1) year from the date of execution. Thereafter, this Agreement shall automatically renew from year to year for a total contract term of five (5) years unless:
 - a. the Agencies and ERG jointly instruct the Escrow Agent in writing that the Agreement is terminated;
 - b. the Escrow Agent notifies the Agencies and ERG in writing after its renewal date that the Agreement is terminated for nonpayment in accordance with Section 9.2; or
 - c. the Escrow Agent provides the Agencies and ERG sixty (60) days written notice of its intent to terminate this Agreement for convenience.
- 9-2 In the event of the nonpayment of fees owed to the Escrow Agent, the Escrow Agent shall provide written notice of delinquency to all parties to this Agreement. If the past due payment is not received in full by the Escrow Agent within one (1) month of the date of such notice, then the Escrow Agent shall have the right to terminate this Agreement at any time thereafter by sending written notice of termination to all parties. The Escrow Agent shall have no obligation to take any action under this Agreement so long as any payment due to the Escrow Agent remains unpaid.
- 9-3 In the event of any termination of this Agreement, the Escrow Agent shall only destroy, return, or otherwise deliver the Escrowed Items upon receipt of joint instructions from the Contract Administrator and ERG.

- 9-4** Upon termination of this Agreement, the following provisions of this Agreement shall survive:
- a. The Escrow Agent's obligations of confidentiality with respect to the Escrowed Items;
 - b. The provisions of Section 6.0; and
 - c. Any provisions in this Agreement which specifically state they survive the termination of this Agreement.

SECTION 10 - Force Majeure

- 10-1** Notwithstanding any other provision of this Agreement, a party is not liable for any failure to perform its obligations under this Agreement where the failure is caused by a Force Majeure Event, provided that the party that failed to perform its obligations: (a) has promptly notified the other parties of such failure and its cause; and (b) has used reasonable endeavors to minimize the effect of the Force Majeure Event and resume performance in accordance with this Agreement as soon as possible.
- 10-2** Upon receipt of the notification referred to in Section 10.1 above, the parties will meet and discuss in good faith how to deal with the Force Majeure Event.

SECTION 11 - Legal Relations

- 11-1** It is understood that this Agreement is solely for the benefit of the parties hereto and gives no right to any other party. No joint venture, agent-principal relationship or partnership is formed as result of this Agreement. No employees or agents of one party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees or agents of any other party.
- 11-2** A party may not assign or otherwise deal with its rights or obligations under this Agreement without the prior written consent of the other parties.
- 11-3** A provision of or right created under this Agreement may not be waived or varied except in writing, signed by the parties. No waiver of any condition, or breach of any provision of this Agreement, in any one or more instances, shall be deemed to be a further or continuing waiver of such condition or breach. Delay or failure to exercise any right or remedy shall not be deemed a waiver of that right or remedy.
- 11-4** The Escrow Agent shall protect, defend, indemnify, and save harmless each of the Agencies, ERG, and their officers, contractors, employees, and agents from any and all costs, claims, judgments, and/or awards of damages, arising out of or in any way resulting from the acts or omissions of the Escrow Agent, its officers, contractors, employees, and/or agents. The Escrow Agent agrees that its obligations under this section extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, the Escrow Agent, by mutual negotiation, hereby waives, as respects each of the Agencies and ERG only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW. In the event each of the Agencies and/or ERG incur attorney fees and/or costs in the defense of claims, for damages within the scope of this section, such fees and costs shall be recoverable from the Escrow Agent.
- 11-5** This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
- 11-6** The provisions of this Section shall survive any expiration or termination of this Agreement.

SECTION 12 - Rights Survive Bankruptcy

The parties acknowledge that this Agreement is an “agreement supplementary to” the RFC Contract, as provided in Section 365 (n) of Title 11, United States Code (the “Bankruptcy Code”). ERG acknowledges that if ERG as a debtor-in-possession or a trustee-in-bankruptcy in a case under the Bankruptcy Code rejects the RFC Contract or this Agreement, the Agencies may elect to retain their rights under the RFC Contract and this Agreement as provided in Section 365 (n) of the Bankruptcy Code. Upon written request of the Agencies to ERG or the bankruptcy trustee, ERG or such trustee shall not interfere with the rights of the Agencies as provided in the RFC Contract and this Agreement, including the right to obtain the Escrowed Items.

SECTION 13 - Notice

All notices provided under this Agreement shall be directed to the parties at the addresses specified in Exhibit 5 attached to this Agreement and incorporated herein. Any changes to the information in Exhibit 5 shall be provided in writing to all parties.

SECTION 14 - Successors And Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

SECTION 15 - Entire Agreement

This Agreement constitutes the entire agreement between the parties on the issues covered by it and shall only be amended in writing signed by authorized representatives of the parties hereto.

SECTION 16 - Severability

If any provision of this Agreement is held invalid by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the parties.

SECTION 17 - Counterparts

This Agreement may be executed in any number of counterparts and all those counterparts taken together shall be considered one agreement.

IN WITNESS WHEREOF, Authorized Representatives Of The Parties Have Signed Their Names In The Spaces Provided Below.

Central Puget Sound Regional Transit Authority

By: _____
Joni Earl, Chief Executive Officer

King County

By: _____
Kevin Desmond, Transit General Manager

Washington State Ferries, Washington State Department Of Transportation

By: _____
Mike Thorne
Director, Chief Executive Officer

City Of Everett

By: _____
Ray Stephanson, Mayor,
Or By His Designee Paul J. Kaftanski,
Director Of Transportation Services

Attest: _____
Clerk, City Of Everett

ERG Transit Systems (USA) Inc.

By: _____
Mike C. Nash
Regional Managing Director

Snohomish County Public Transportation Benefit Area

By: _____
Joyce F. Olson, Chief Executive Officer

Kitsap County Public Transportation Benefit Area

By: _____
Richard M. Hayes, Executive Director

Pierce County Public Transportation Benefit Area

By: _____
Don S. Monroe, Chief Executive Officer

(Escrow Agent)

By: _____

EXHIBIT 1 DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Where used in the Agreement, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Agency or Agencies

The term to be used when referring to one or more of the participating public transportation agencies.

Agency Consultants

Consultants that may be retained by one or more of the Agencies from time to time to assist them in operating and maintaining the RFCS but not a contractor retained to provide O&M services for the RFCS of substantially the same scope as the O&M portions of this Contract.

Clearinghouse

ERG's central revenue and ridership data management systems, hardware and software located in Concord, California.

Contract Administrator

The individual designated by the Agencies for contract administration.

Contractor

The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with ERG and The Agencies for the performance of Services or Work under the Contract. Also known as the "Escrow Agent."

Contractor IP

All Intellectual Property and any Updates and Upgrades thereto that are created or provided by the Contractor for use in the RFC System, except for RFCS IP, Third Party IP, DDU IP, RCU IP, Use Data, Use Data Reports and those Contract Deliverables not specifically identified as containing Contractor IP in Section 35.5 of the RFC Contract.

Day

Calendar day.

DDU (Driver Display Unit)

The human-machine interface for driver interaction with on-board systems on transit vehicle.

DDU IP

All Intellectual Property and any Updates and Upgrades thereto, that are developed by the Contractor after execution of the Contract to comply with the Agencies' requirements for the DDU, consisting of:

The designs and related documents developed to incorporate the look, feel, logic, menus, hierarchy of functions, text displays and other Contract requirements that are specified by the Agencies for the DDU in the original Contract or as agreed to during the design process, including but not limited to the "Conceptual King County Driver Display Unit Operating Concept" attached as Appendix F and Section 6.III-6.8.4 of the Contract entitled "Community Transit Integration";

The software and firmware developed solely to implement the agreed-upon design;

The software and firmware developed by the Contractor as specified in the Contract to enable the DDU to control the RCU and operate King County's radio and AVL devices and functions, independent of the functioning of the RFCS; and any software and firmware developed by the Contractor, as specified in the original Contract or at subsequent Agency request via Change Order, that enable the DDU to operate any other non-RFCS devices or functions independent of the functioning of the RFCS.

Escrow Agent

The firm selected by the Agencies to provide escrow services as required under the RFC Contract.

Escrow Premises

The location where Escrowed Items are stored by the Escrow Agent.

Escrowed Items

The IP Materials, as that term is defined herein, that relate to DDU IP, RCU Developed IP, Contractor IP, and RFCS IP.

Force Majeure Event

Includes, but is not limited to, acts of nature, acts of civil or military authorities, acts of war and terrorism, fire, accidents, shutdowns for purpose of emergency repairs, strikes, and other labor disruptions and any other industrial, civil or public disturbance, that are not reasonably within the control of a party, causing the inability to perform its obligations under this Agreement.

Full System Acceptance

The Agencies' Acceptance of the complete RFC System.

Intellectual Property

Any invention, process, equipment, hardware, firmware, software, documentation, system, improvement, discovery, database, development, document or work product, which qualifies or may qualify for a patent, trademark, copyright, trade secret, or other form of proprietary right under the laws of a state, the United States of America, or any other country.

Interim Escrow Agreement

Agreement established between the Agencies and the Interim Escrow Trustee for deposit of IP Materials pending award of the Escrow Services Contract.

IP Materials

All materials related to software, firmware and hardware, whether classified as DDU IP, RCU IP, Contractor IP, RFCS IP or Third Party IP, and consisting of the following:

- For software and firmware: the compiled executable code, interface specifications and Software Documentation for each program, module and element of software and firmware provided or used in the RFCS system or any unit of equipment
- For hardware: chip designs/maskworks as applicable (e.g. smart card chips), hardware designs, patents, prototypes, User Documentation and General Public Documentation.

OBFTP

On-board Fare Transaction Processor

RCU (Radio Control Unit)

An interface device for controlling King County's radio and automatic vehicle location systems on-board a transit vehicle.

RCU IP

The combination of the RCU Background IP and the RCU Developed IP.

RCU Background IP

All Intellectual Property owned by King County and in existence prior to the RFC Contract which is licensed to the Contractor for development of the RCU.

RCU Developed IP

All Intellectual Property and any Updates and Upgrades thereto that are created or provided by the Contractor for use in the RCU.

Regional Fare Coordination Contract (RFC Contract or Contract)

The Contract entered into between the Contractor and each of the Agencies for the Development, Implementation, Operation and Maintenance of the Regional Fare Coordination System.

Regional Fare Coordination System (RFCS)

All systems, equipment and work to be provided to the Agencies under the RFC Contract.

RFCS IP

All Intellectual Property and any Updates and Upgrades thereto that are created or provided by the Contractor for use in the RFC System which are developed by the Contractor solely for the purpose of

complying with the Contract (but excluding the DDU IP, the RCU IP, the Contract Deliverables, Use Data and the Use Data Reports).

SAFTP

Stand-Alone Fare Transaction Processor

Software Documentation

Comprises, for each program, module and element of software and firmware included in DDU IP, RCU IP, Contractor IP, RFCS IP and Third Party IP, the following items:

1. Complete source code including all header files, include files, make files, and macros.
2. Copy (pre-built) of the application executables and libraries produced from the source code.
3. Description of the relationship of the object code modules or “executables” to each other; as well as the relationship of these executables to any third-party programs.
4. Description of the source computer which created the source code; the configurations necessary to compile the code; a copy of the proper compiler and the correct compilation instructions; any source code control system or other encryption or encoding devices which have been applied to the source code; any third party applications and how to access same; the configuration of the environment in which the executables will function, including hardware as well as third party software.
5. Comprehensive installation and configuration documentation and procedures, complete with copies of any automated tools used to perform the installation, detailing the steps required to enable a competent person with appropriate skills to install and run the target application.
6. Licensed copy of, and complete documentation for, the operating system or systems required to host the software.
7. Comprehensive build documentation and instructions reasonably required or necessary to enable a competent independent third party programmer to create, operate, maintain, modify, improve and create Derivative Works from the software without the help of any person, including, but not limited to:
 - a. documentation detailing the steps to build the target executable(s) and library(s) from the source code;
 - b. documentation detailing the pre-requisite configurations of the source code (e.g. directory structures) and compilation tools (e.g. compiler switches, environment variables) necessary to begin the build process.
 - c. documentation identifying the target platform requirements (including limitations and restrictions) that are necessary for the application to fully and properly function as designed (e.g. operating system, environment variables, object library & DLL needs and expected location, third party drivers that must be installed and running, third party libraries, specific hardware resources that are expected by the application, list of alternatives if applicable for any of the required Software or hardware elements)
 - d. scripts, utilities, lists of tools (including compiler names and versions), make tool names and versions, third party libraries, and an archive copy of tools
 - e. technical specifications, flowcharts and logic diagrams, schematics, annotations and data files
8. Programming tools and routines created by the Contractor and not commercially available.
9. Listing of all third party utilities, drivers, libraries, and header files used to compile and link the source code; and copy of all documentation that is generally provided to licensees with the third party utilities, drivers, libraries, and header files to the extent provision of copies is permitted by the third parties.
10. Listing of the application(s) used to build the target executable(s) and library(s) from the source code and documentation of same to the extent its provision is permitted by third party owners.
11. Verification and validation procedures to ensure software build is correct and complete.

12. Complete list of any passwords required by the target software or any third party application where applicable.
13. All other information necessary to compile and use the source code
14. Security algorithms and security keys
15. User Documentation including but not limited to user manuals, training manuals, and maintenance manuals
16. General Public Documentation including instructions to the general public, third-party revalue retailers and institutional customers on the features, uses and functions of the software

Test Materials

Any materials provided by the Contractor to the Escrow Agent and/or the Agencies for purposes of Verification of Escrowed Items.

Third Party IP

All Intellectual Property and any Updates and Upgrades thereto that are provided by the Contractor for use in the RFC System but which Intellectual Property is not owned by the Contractor, ERG Limited, ERG R&D Pty. Ltd., any other wholly-owned subsidiary of ERG Limited or an Agency.

TVM

Ticket Vending Machines.

Verification

Any services performed by the Escrow Agent regarding the Escrowed Items for the purpose of verifying their accuracy, completeness, sufficiency and/or quality.

EXHIBIT 2
MATERIALS TO BE DEPOSITED

Deposit Account Number _____

ERG represents to the Agencies that Deposit Materials delivered to (Escrow Agent) shall consist of the following:

ERG

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT 3
DESCRIPTION OF DEPOSIT MATERIALS

Depositor Company Name: _____

ERG Transit Systems (USA) Inc. _____

Deposit Account Number _____

Product Name: _____ Version _____

(Product Name will appear as the Exhibit 3 Name on Account History report)

DEPOSIT MATERIAL DESCRIPTION:

Quantity	Media Type & Size	Label Description of Each Separate Item
_____	Disk 3.5" or _____	_____
_____	DAT tape _____ mm	_____
_____	CD-ROM _____	_____
_____	Data cartridge tape _____	_____
_____	TK 70 or _____ tape	_____
_____	Magnetic tape _____	_____
_____	Documentation	_____
_____	Other _____	_____

PRODUCT DESCRIPTION:

Environment _____

DEPOSIT MATERIAL INFORMATION:

Is the media or are any of the files encrypted? Yes / No If yes, please include any passwords and the decryption tools.

Encryption tool name _____ Version _____

Hardware required _____

Software required _____

Other required information _____

DEPOSIT CERTIFICATION REQUIREMENTS:

Has the Escrow Agent completed the requirements of Section 3.4 of the Agreement for this deposit?

I certify for **Depositor** that the above described (**Escrow Agent**) has visually inspected and accepted the Deposit Materials have been transmitted to _____
above materials *(any exceptions are noted above)*:

Signature _____ Signature _____

Print Name _____ Print Name _____

Date _____ Date Accepted _____

E-mail address _____ Exhibit 3# _____

Exhibit 4

Optional Verification Services

1.0 GENERAL

A summary of the current build environment and testbed for software-related Escrowed Items is contained in Attachment 1. ERG shall notify the Escrow Agent and the Agencies in writing within ten (10) days following any changes to the information contained in Attachment 1.

2.0 OPTIONAL VERIFICATION SERVICES

In addition to the escrow and media verification that will be conducted by the Escrow Agent for each deposit of Escrowed Items in accordance with Section 3.4 of the Agreement, from time to time, and as directed by the Contract Administrator, the Escrow Agent shall provide the following two types of Optional Verification Services:

- a. Software compilation
- b. Software execution and testing

Software compilation and software execution/testing shall be conducted at a testbed site, located at ERG's facilities in Perth, Australia. ERG shall make support staff available at no cost to the Agencies as required by this Agreement and the RFC Contract, however the Escrow Agent shall have primary responsibility for compilation and execution/testing of Escrowed Items. The Agencies may also, at their sole discretion, direct the Escrow Agent to conduct said Optional Verification Services elsewhere than at ERG's facilities in Perth, Australia. Provided, however, if Optional Verification Services are performed elsewhere than Perth, Australia, then ERG shall not be required to supply any facilities, computer software systems (other than Escrowed Items), hardware or technical or support personnel for such verification.

A. Compilation

Compilation shall include compilation of software source code contained in the Escrowed Items, creation of executable code, and confirmation that compiled executable code corresponds in file size and version to that included in the Escrowed Items.

The Escrow Agent shall provide the following compilation services:

1. Provide on-site compilation services at ERG's testbed in Perth, Australia or at another location as directed by the Agencies.
2. Verify that all required compilers, tools, build instructions, source code languages, libraries, operating systems, third party application software, and hardware as required for software compilation, have been provided by ERG.
3. Compile source files and modules contained in the Escrowed Items, and create executable code for microcomputer and microcontroller devices.
4. Provide a report listing hardware and software configurations used to compile the software; steps followed to create the executables; confirmation that all source files and modules could be compiled; and any exceptions, inconsistencies, or discrepancies noted.
5. Deposit the Escrowed Items in secure storage at Escrow Premises.

B. Execution and Testing

The Escrow Agent shall provide the following execution and testing services:

1. Provide services as described under "Compilation"

2. Install compiled software, third party software, and data on testbed microcomputer devices. Burn microcontroller firmware onto read-only memory and install in one unit of each microcontroller device. In the event that installation in microcontroller devices is not feasible, the firmware version in the Escrowed Items shall be checked against that of the microcontroller devices in the testbed.
3. Conduct a series of tests in the runtime environment to verify operation of the software. Test scripts shall be provided by ERG, subject to approval by the Contract Administrator.
4. Provide a report listing development and runtime hardware and software configurations used to compile and install the software; steps followed to create the executables; confirmation that all source files and modules could be compiled; test scripts used; test results; and any exceptions, inconsistencies, or discrepancies noted.
5. Deposit the Escrowed Items in secure storage at Escrow Premises.

Exhibit 4 Attachment 1
Summary Of Build Environment And Testbed Hardware

A. Build Environment

- (1) Number of build processes
- (2) There are four (4) primary build processes.
- (3) Build environments
- (4) Three (3) – Windows 2000 Server, Solaris, and Embedded.
- (5) Operating systems
- (6) Solaris 5.8.1.7 and Windows 2000 Server, Service Pack 3.
- (7) Number of separate deliverable components (executables, share libraries, etc.) to be built
- (8) Approximately 100
- (9) Compilers/linkers/other tools (brand and version) necessary to build the application
- (10) Sun 1 Studio 7, Microtec Research C & C++ Compiler/Assembler/Linker, Microsoft Visual Studio V6 Enterprise Edition, Java JDK 1.4 with Borland Jbuilder V7, VisionClick Real Time Debugger, NMAKE (Make Utility)
- (11) Third party libraries used to build the software
- (12) ACE Tao CORBA implementation, Interbase, Pearl Multi-threaded extensions, Dinkumware STL implementation.

B. Testbed Hardware

Five Solaris SPARC machines with minimum configuration as per the Blade 100 or equivalent, with an additional 128 MB of RAM. Also five PC's with minimum of 500 MB of RAM, 40 GB disk space and 1 GHZ processor. The Sparc and PC machines would be shared between the Central System, Local Communications Server, Back Office Client, Data Acquisition Computer, and CST functions.

Also provided are embedded devices such as the Driver Display Unit, On-Board FTP, Stand Alone FTP, Portable, TVM integration kit (possibly a TVM), and smart cards. Network equipment would include 802.11b WLAN units, as well as routers/switches and hubs. Peripheral equipment for the Customer Service Terminal are also provided as well as printers.

The list below provides a summary:

- 5 Solaris Sparc machines
- 5 Personal Computers (PCs)
- 1 Driver Display Unit (DDU)
- 1 On-Board Fare Transaction Processor (OBFTP)
- 2 Stand Alone Fare Transaction Processor (SAFTP) (one of each type)
- 2 Portables (one of each type)
- 1 Ticket Vending Machine (TVM) integration kit (possibly a TVM)
- 20 Smart Cards of various types and configurations
- 2 Cisco 802.11b WLAN units (one access point and one wireless group bridge)
- 1 Set of Customer Service Terminal Peripherals
- 1 Set of router/switch and hub

**EXHIBIT 5
PRICE SCHEDULE**

This Schedule Will Be Completed At Contract Award)

EXHIBIT 6 (to be completed at time of Escrow Services Contract Award)**DESIGNATED CONTACTS**

Requests from Depositor, Escrow Agent or Agencies to change the designated contact should be given in writing by the designated contact or an authorized employee of Depositor, Escrow Agent or Agencies.

DEPOSITOR	AGENCIES
Notices, deposit material returns and communications to ERG should be addressed to: Company Name: ERG Transit Systems Address: 411 1 st Ave. S., Suite 1N Seattle, WA 98104 Designated Contact: Timothy M. Stouse, Project Manager Telephone: (206) 749-5500 Facsimile: (206) 749-9670 E-mail: tstouse@erggroup.com Verification Contact: _____ Telephone/E-mail: _____ Note: Fees for this agreement will be paid by the Agencies.	Notices, deposit material returns and communications to Agencies should be addressed to: Company Name: Regional Fare Coordination Project Address: 201 S. Jackson St. MS: KSC-TR-0415 Seattle, WA 98104 Designated Contact: Candace Carlson, Contract Administrator Telephone: (206) 684-1562 Facsimile: (206) 684-1983 E-mail: candace.carlson@metrokc.gov Contract #: _____

ESCROW AGENT	
Deposit Materials are to be delivered to: Company Name: _____ Address: _____ Designated Contact: _____ Telephone: _____ Facsimile: _____ E-mail: _____ Deposit Materials will be stored at: Address: _____ All Notices and communications to Escrow Agent should be addressed to: Company Name: _____ Address: _____ Designated Contact: _____ Telephone: _____ Facsimile: _____ E-mail: _____ Deposit Account Number: _____	All invoice fee remittances to Escrow Agent should be addressed to: Company Name: _____ Address: _____ Designated Contact: _____ Telephone: _____ Facsimile: _____ E-mail: _____ Note: Banking information for electronic payments to be provided to Contract Administrator. Date: _____

EXHIBIT 7
Supplemental Terms and Conditions

EXHIBIT 7

SUPPLEMENTAL TERMS AND CONDITIONS

TABLE OF CONTENTS

SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS	5
1-1 Administration	5
1-2 Contract Changes.....	5
1-3 Cost or Price Analysis	5
1-4 Washington State Sales Tax.....	5
1-5 Taxes, Licenses, and Certificate Requirements	5
1-6 Conflicts of Interest and Non-Competitive Practices.....	6
1-7 Disputes, Claims and Appeals	6
1-8 Mediation and Arbitration	7
1-9 Disadvantaged Business Enterprise (DBE) Participation.....	7
1-10 Nonwaiver of Breach.....	8
1-11 Non-Discrimination in Benefits to employees with Domestic Partners	8
1-12 Nondiscrimination and Equal Employment Opportunity.....	8
<i>A. Nondiscrimination in Employment and Provision of Services</i>	<i>8</i>
<i>B. Nondiscrimination in Subtracting Practices</i>	<i>8</i>
<i>C. Compliance with Laws and Regulations</i>	<i>8</i>
<i>D. Record-keeping Requirements and Site Visits.....</i>	<i>9</i>
<i>E. Discrimination In Contracting</i>	<i>9</i>
1-13 Labor Harmony	9
SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS.....	10
2-1 Execution of the Contract.....	10
2-2 Payment Procedures.....	10
<i>A. Invoices</i>	<i>10</i>
<i>B. Payments</i>	<i>10</i>
<i>C. Subcontractor Prompt Payment.....</i>	<i>10</i>
2-3 Shipping Charges	10
2-4 Direct Costs Related to Work.....	11
2-5 Express Warranties for Services.....	11
2-6 Board of Ethics Disclosure Requirement.....	12
2-7 Changed Requirements	12
2-8 Counterparts	12
SECTION 3 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS.....	13
3-1 Changes in Federal laws, Regulations, Policies and Administrative Practices	13
3-2 Federal Changes.....	13
3-3 No Federal Government Obligations to Third Parties.....	13
3-4 Equal Employment Opportunity.....	13
3-5 Compliance With Section 504 Of The Rehabilitation Act.....	14
3-6 Title VI Compliance	14

3-7	Labor Provisions - Non-Construction Contracts.....	15
3-8	Cargo Preference - Use of U.S. Flag Vessels.....	16
3-9	Fly America	17
3-10	Audit and Inspection of Records	17
3-11	FTA Protest Procedures	17
3-12	Privacy	18
3-13	Access Requirements for Individuals with Disabilities	18
3-14	Interest of Members of or Delegates of Congress.....	19
3-15	Certification Regarding Debarment, Suspension and Other Responsibility Matters	19
3-16	Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility	19
3-17	Disclosure of Lobbying Activities.....	20
3-18	Anti-Kickback.....	20
3-19	False or Fraudulent Statements or Claims.....	20
3-20	Conservation.....	21
3-21	Air Pollution	21
3-22	Environmental Requirements.....	21
3-23	Termination Provisions Required	22
3-24	Breach Provisions Required	22

ATTACHMENTS:

Attachment A	Contractor Registration Form
Attachment C	Equal Benefits Compliance Declaration
Attachment D	Personnel Inventory Report
Attachment E	Affidavit and Certificate of Compliance Regarding Equal Employment Opportunity
Attachment I	Certificate of Lobbying Activities
Attachment J	Disclosure Form to Report Lobbying and Instruction
Attachment N	504/ADA Assurance of Compliance

DEFINITION OF WORDS AND TERMS

Words and terms shall be given their ordinary and usual meanings. Where used in the Contract documents, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

Acceptance or Accepted: Written documentation of ERG and The Agencies determination that the Contractor's Work has been completed in accordance with the Contract.

Administrative Change: Documentation provided by County to Contractor, which reflects internal King County procedures not affecting the Contract terms or Scope of Work.

Buyer: Individual designated by the County to conduct the Contract solicitation process, draft and negotiate contracts, resolve contractual issues and support the Contract Administrator during Contract performance.

Change Documentation: A written document agreed upon by Contract Administrators, which if it creates a material change to the Contract term or Scope of Work shall be executed as an Amendment.

Contract Administrator: The individual designated by ERG and The Agencies to manage the project on a daily basis and who represents ERG and The Agencies for Contract administration. This Contract may be part of a larger County project.

Contract Amendment: A written change to the Contract modifying, deleting or adding to the terms or scope of work, signed by both parties, with or without notice to the sureties.

Contract or Contract Documents: The writings and drawings embodying the legally binding obligations between ERG and The Agencies and the Contractor for completion of the Work under the Contract as set forth in this document.

Contractor: The individual, association, partnership, firm, company, corporation, or combination thereof, including joint ventures, contracting with ERG and The Agencies for the performance of Services or Work under the Contract. Also known as the "Escrow Agent."

Cost Analysis: The review, evaluation and verification of cost data and the evaluation of the specific elements of costs and profit. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which proposed costs represent what the Contract should cost, assuming reasonable economy and efficiency.

Day: Calendar Day.

Documentation: Technical publications relating to the use of the Software or Services to be Provided by Contractor under this Contract, such as reference, user, installation, systems administration and technical guides, delivered by the Contractor to the County.

Enhancement: Technical or functional additions to the Software to improve Software Functionality and/or operations. Enhancements are delivered with new releases of the Software.

Error: An unanticipated Software problem resulting in program behavior not following the Software's logical design and/or Contractor's Documentation.

Escrow Agent: The firm selected by the Agencies to provide escrow services as required under the RFC Contract.

Escrow Agreement: The agreement negotiated between ERG and The Agencies and the Escrow Agent, the Contractor, to define the scope of work to be performed by the Escrow Agent.

Escrow Premises: The location where Escrowed Items are store by the Escrow Agent.

ERG: ERG Transit Systems (USA), Inc., is the vendor contracted by the agencies to provide the Regional Fare Coordination System under the RFC contract with Smart Card technology software.

Final Acceptance: The point when King County acknowledges that the Contractor has performed the entire Work in accordance with the Contract.

Person: Includes individuals, associations, firms, companies, corporations, partnerships, and joint ventures.

Previous Sequential Release: A release of Software for use in a particular operating environment that has been replaced by a subsequent release of the Software in the same operating environment. Contractor shall support a Previous Sequential Release. Multiple Previous Sequential Releases may be supported at any given time.

Price Analysis: The process of examining and evaluating a price without evaluating its separate cost elements and proposed profit.

Provide: Furnish without additional charge.

Regional Fare Coordination System (RFCS): All systems, equipment and work to be provided to the Agencies under the RFC Contract.

RCW: The Revised Code of Washington.

Scope of Work or Statement of Work (SOW): A section of the Contract consisting of written descriptions of Services to be performed, or the goods to be provided or the technical requirements to be fulfilled under this Contract contained within Scope of Work Section.

Services: The furnishing of labor, time or effort by a Contractor, including Software Maintenance or Support, custom Software, or consulting but not involving the delivery of any specific manufactured goods.

Software: All or any portion of the then commercially available version(s) of the computer Software programs and Enhancements thereto, including source code, localized versions of the computer Software programs and Enhancements thereto, including source code and Documentation delivered by Contractor to ERG and The Agencies.

Source Code: Means computer programs written in higher-level programming languages, sometimes accompanied by English language comments. Source Code is intelligible to trained programmers and may be translated to Object Code for operation on computer equipment through the process of compiling.

Subcontractor: The individual, association, partnership, firm, company, corporation, or joint venture entering into an agreement with the Contractor to perform any portion of the Work covered by this Contract.

Update: All published revisions to the Documentation and copies of the new release of the Software, which are not designated by Contractor as new products.

Upgrade: Subsequent releases of the Software and Documentation that generally have a new major version number, i.e. version 6.3 to version 7.0, not 6.3 to 6.4.

Verification: Any services performed by the Escrow Agent regarding the Escrowed Items for the purpose of verifying their accuracy, completeness, sufficiency and/or quality.

Virus: Software code that is intentionally and specifically constructed for the purpose of destroying, interrupting or otherwise adversely impacting other code or data in a computer, such as replicating itself or another program many times without any useful purpose.

Work: Everything to be provided and done for the fulfillment of the Contract and shall include all Software, Hardware and Services specified under this Contract, including Contract Changes and settlements

SECTION 1 - STANDARD CONTRACTUAL TERMS AND CONDITIONS

1-1 Administration

This Contract is between ERG, The Agencies and the Contractor, the Escrow Agent, who shall be responsible for providing the Work described herein. ERG and The Agencies are not party to defining the division of Work between the Contractor and its Subcontractors, if any, and the Scope of Work has not been written with this intent.

The Contractor represents that it has or shall obtain all personnel, materials and equipment required to perform Work hereunder. Such personnel shall not be current or former employees of ERG and The Agencies without the written approval of ERG and The Agencies. Any current or former ERG or Agency employee who is involved, or becomes involved, in the performance of the Contract shall be disclosed; and ERG and The Agencies shall determine whether conflicts of interest or ethical violations exist under the circumstances.

The Escrow Agent's performance under this Contract may be monitored and reviewed by a Contract Administrator appointed by ERG and The Agencies. Reports and data required to be provided by the Escrow Agent shall be delivered to the Contract Administrator. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Buyer or Contract Administrator for response.

1-2 Contract Changes

No oral order or conduct by ERG and The Agencies shall constitute a Contract change. All parties shall agree to contract changes in writing.

If any Contract change causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the project schedule, or both shall be made and the Contract and all related purchase orders(s) modified and agreed to in writing by both parties. Every contract change may require a Cost/Price Analysis to determine the reasonableness of the proposed adjustments to Contract price or schedule. Contract changes do not require notice to sureties by County.

1-3 Cost or Price Analysis

ERG and The Agencies may require Cost or Price Analysis, contract changes, terminations, and revisions to contract requirements or other circumstances as determined by ERG and The Agencies.

1-4 Washington State Sales Tax

ERG and The Agencies shall make payment directly to the State for all applicable State sales taxes in case the Contractor is not registered for payment of sales taxes in the State of Washington. If the Contractor is so registered, it shall add the sales tax to each invoice and upon receipt of payment from The Agencies, promptly remit appropriate amounts to the State of Washington.

1-5 Taxes, Licenses, and Certificate Requirements

This Contract and any of the Work Provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or Services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify ERG and The Agencies immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses permits and costs as may be required by applicable federal, state or local laws and regulations as may be required to provide the Work under this Contract.

1-6 Conflicts of Interest and Non-Competitive Practices

A. Conflict of Interest

By entering into this Contract to perform Work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not acquire any interest that conflicts in any manner or degree with the Work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to ERG and The Agencies. ERG and The Agencies shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

B. Contingent Fees and Gratuities

By entering into this Contract to perform Work, the Contractor represents that:

1. No Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and
2. No gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the or any of its agents, employees or representatives, to any official, member or employee of ERG and The Agencies or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

1-7 Disputes, Claims and Appeals

The Contractor shall address questions or claims regarding the Contract in writing to the Buyer and Contract Administrator, within ten (10) Days of the date in which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Buyer and Contract Administrator shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Buyer and Contract Administrator.

In the event the Contractor disagrees with the determination of the Buyer and Contract Administrator, the Contractor shall, within five (5) Days of the date of such determination, appeal the determination in writing to the Procurement and Contract Services Section Manager. Such written notice of appeal shall include all information necessary to substantiate the appeal. The Procurement and Contract Services Section Manager shall review the appeal and make a determination in writing, which shall be final. Appeal to the Procurement and Contract Services Section Manager shall be a condition precedent alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Buyer or Contract Administrator.

Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgment of prejudice to ERG and The Agencies.

1-8 Mediation and Arbitration

Nothing in this subsection precludes any party from seeking relief from King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle. If a dispute arises out of or relates to this Contract, or the breach thereof, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation. Thereafter, any unresolved controversy or claim arising out of or relating to this Contract, or breach thereof, may be resolved by arbitration, and judgment upon the award rendered by the arbitrator may be entered in either King County Superior Court or the U.S. District Court for the Western District of Washington, in Seattle.

1-9 Disadvantaged Business Enterprise (DBE) Participation

- A. Nondiscrimination 49 CFR part 26. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as ERG and The Agencies deems appropriate.
- B. DBE Program. King County (hereby after referred to as “the County”) has determined that no DBE goal shall be established for this Contract. However, the County requires that the Contractor report any actual DBE participation on this Contract to enable the County to accurately monitor DBE program compliance.
- C. Efforts to Increase DBE Participation. Even though this Contract has no DBE goal, the County still encourages Contractors to pursue opportunities for DBE participation. To that end, Contractors are encouraged to:
 - 1. Advertise opportunities for subcontractors and suppliers (“subcontractors”) in a manner reasonably designed to provide DBEs capable of performing the work with timely notice of such opportunities. All advertisements should include a provision encouraging participation by DBE firms and may be done through general advertisements (e.g., newspapers, journals, etc.) or by soliciting Proposals directly from DBEs.
 - 2. Utilize the services of available minority community organizations, minority consultant groups, local minority assistance offices and organizations that provide assistance in the recruitment and placement of DBEs and other small businesses.
 - 3. Establish delivery schedules, where requirements of the contract allow and encourage participation by DBEs and other small businesses.
 - 4. Achieve DBE attainment through joint ventures.
- D. DBE Listing. A current list of DBE firms accepted as certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE) is available from that office at (360) 753-9693. For purposes of this Contract, a DBE firm shall be certified by OMWBE as of the date and time of bid submittal.
- E. Procedure Applicable when DBEs Are Utilized. Concurrent with the use of any DBE subcontractor or supplier the Contractor shall provide notice of such use in writing to the King County Business Development and Contract Compliance Section (BDCC). Upon receipt of said notice, BDCC shall provide the Contractor with the applicable procedures for counting DBE participation. Assistance

with this Section is available from BDCC at (206) 205-0700. Notice referenced herein should be delivered to the following address:

King County
Office of Business Relations and Economic Development
M.S. KCC-EX-0402
516 3rd Avenue, Room 550
Seattle, WA 98104-3271
Phone: 206-205-0700
Fax: 206-296-0194

1-10 Nonwaiver of Breach

No action or failure to act by ERG and The Agencies shall constitute a waiver of any right or duty afforded to ERG and The Agencies under the Contract; nor shall any such action or failure to act by ERG and The Agencies constitute an approval of, or acquiescence in, any breach hereunder, except as may be specifically stated by ERG and The Agencies in writing.

1-11 Non-Discrimination in Benefits to employees with Domestic Partners

King County's Domestic Partner Benefits (DPB) Ordinance 14823 prohibits the award of contracts valued at \$25,000.00 or more to firms that discriminate in the provision of employee benefits between employees with spouses, and employees with domestic partners. To be eligible for award, Contractors shall comply fully with the ordinance's provisions. Within five (5) days of notification of intent to award, and as a condition of the execution of a contract, the successful bidder/proposer shall provide to King County Procurement & Contract Services Section a completed [Attachment C](#) - Equal Benefit Worksheet and Declaration Form. This form is available online at www.metrokc.gov/finance/procurement/forms.asp.

1-12 Nondiscrimination and Equal Employment Opportunity

A. Nondiscrimination in Employment and Provision of Services.

During the performance of this Contract, neither the Contractor nor any party subcontracting under the authority of this Contract shall discriminate nor tolerate harassment on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or the presence of any sensory, mental, or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract. King County Code Chapter 12.16 is incorporated herein by reference, and such requirements shall apply to this Contract.

B. Nondiscrimination in Subcontracting Practices.

During the solicitation, award and term of this Contract, the Contractor shall not create barriers to open and fair opportunities to participate in County contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, the Contractor shall not discriminate against any person on the basis of race, color, creed, religion, sex, age, nationality, marital status, sexual orientation or the presence of any mental or physical disability in an otherwise qualified disabled person.

C. Compliance with Laws and Regulations.

The Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit discrimination.

Unfair Employment Practices. King County Code Chapter 12.18 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract.

D. Record-keeping Requirements and Site Visits.

The County may, at any time, visit the project site, Contractors' and Subcontractors' offices to review records related to the solicitation, utilization, and payment to subcontractors and suppliers in compliance with Executive Order 11246 as amended by Executive Order 11375. This provision includes compliance with any other requirements of this Section. The Contractor shall provide all reasonable assistance requested by King County during such visits. The Contractor shall maintain, for six (6) years after completion of all work under this Contract, the following:

1. Records, including written quotes, bids, estimates or proposals submitted to the Contractor by all businesses seeking to participate on this Contract, and any other information necessary to document the actual use of and payment to subcontractors and suppliers in this Contract.
2. The Contractor shall make the foregoing records available to King County for inspection and copying upon request. Any violation of the mandatory requirements of the provisions of this subsection shall be a material breach of contract, which may result in termination of this Contract or such other remedy as the County deems appropriate, including but not limited to damages or withholding payment.

E. Discrimination In Contracting

King County Code Chapter 12.17 is incorporated by reference as if fully set forth herein and such requirements apply to this Contract. During the performance of this Contract, neither Contractor nor any party subcontracting under the authority of this Contract shall discriminate or engage in unfair contracting practices prohibited by KCC 12.17.

1-13 Labor Harmony

The Contractor shall furnish, and shall require any and all of its subcontractors to furnish labor that works in harmony with all other elements of labor providing in any way goods or services relating to this Contract. Without limiting the generality of the foregoing, "labor harmony" shall include the provision of labor that will not cause, cause to be threatened, engage in, or give rise to, either directly or indirectly, any disruption, slowdowns, or stoppages to the work being performed pursuant to this Contract, or any violence or harm to any persons or property.

The requirement to provide labor harmony as contained above is a material element of the Contract. Failure by the Contractor, or any of its subcontractors, to comply with this requirement shall be deemed a material breach of the Contract and shall subject the Contractor to all rights and remedies the

County may have at law or under the Contract, including, without limitation, ERG and The Agencies's right to stop the work and/or terminate the Contract. The Contractor shall be liable for all damages occasioned by a breach of this Labor Harmony Clause.

SECTION 2 - SPECIFIC CONTRACTUAL TERMS AND CONDITIONS

2-1 Execution of the Contract

The documents constituting the Contract between ERG and The Agencies and the Contractor are intended to be complementary so that what is required by any one of them shall be as binding as if called for by all of them. In the event of any conflicting provisions or requirements within the several parts of the Contract documents, they shall take precedence as listed in Subsection 1-4 of the Contract. The date the Contract is countersigned by ERG and The Agencies is the Contract effective date. No other act of ERG and The Agencies shall constitute Contract award.

This Agreement may be executed in any number of counterparts and all those counterparts taken together shall be considered one agreement.

2-2 Payment Procedures

A. Invoices

The Contractor for Work Accepted by ERG and The Agencies shall furnish invoices to:
Candace Carlson
Contract Administrator
King Street Center
KSC-TR-0415
201 S Jackson St
Seattle, WA 98104

Important All invoices shall include the following information: Contract number, requester's name and phone number, date of invoice, invoice number and invoice total. For each service defined in Exhibit 6 in the Contract provide the: item number, quantity, description, contract price. **FAILURE TO COMPLY WITH THESE REQUIREMENTS OR TO PROVIDE AN INVOICE IN CONFORMANCE WITH THE CONTRACT MAY DELAY PAYMENT.**

B. Payments

Within thirty (30) Days after receipt of an approved invoice, The Agencies shall pay the Contractor for accepted Work. Upon acceptance of payment Contractor waives any claims for the Work covered by the Invoice. Payments shall be made to the Escrow Agent by electronic funds transfer per information provided in Exhibit 7.

If the Contractor is registered with the State of Washington it shall add all applicable State Sales use taxes to each invoice and upon receipt of the payment promptly remit appropriate amounts to Washington, or the Agencies will make payment directly to the State.

C. Subcontractor Prompt Payment

The Contractor agrees to pay each Subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) Days from the receipt of each payment the Contractor receives from the Agencies.

2-3 Shipping Charges

All prices shall include freight FOB to the designated delivery point. ERG and The Agencies shall reject requests for additional compensation for freight charges.

2-4 Direct Costs Related to Work

All costs for Work shall be included in the fixed fees for services described in Exhibit 6 Price Schedule. If the Contract Administrator requests an Optional Verification Service be performed at a location other than ERG's offices in Concord, CA or in Perth, Australia or Escrow Agent US location, the Escrow Agent shall be reimbursed for such associated travel costs of one (1) Escrow Agent personnel. Reimbursement of travel expenses for one Escrow Agent Personnel to travel to the location specified by the Contract Administrator will be as follows:

Reimbursement of Contractor travel, lodging and meal expenses are limited to the eligible costs based on the rates and criteria established in King County Code, chapter 3.24.

- A. The mileage rate allowed by King County shall not exceed the current Internal Revenue Services (IRS) rates per mile as allowed for business related travel. The IRS mileage rate shall be paid for the operation, maintenance and depreciation of individually owned vehicles for that time which the vehicle is used during Work hours. Parking shall be the actual cost. When rental vehicles are authorized, government rates shall be requested. If a Person does not request government rates, he/she maybe Personally responsible for the difference. Please reference the IRS web site for current rates. <http://www.irs.gov/>.
- B. Reimbursement for meals shall be limited to the per diem rates established by Federal travel requisitions for the host city in the code of Federal Regulations, 41 CFR § 301,App.A.
- C. Accommodation rates shall not exceed the Federal Lodging limit plus host city taxes. The Contractor shall always request government rates.
- D. Air travel shall be by coach class at the lowest price available at the time the Contract Administrator requests a particular trip. In general, a trip is associated with a particular Work activity of limited duration and only one round-trip ticket, per Person, shall be billed per trip.
- E. Cost for equipment, materials and supplies, such as equipment rental; telephone, telegraph and cable expenses; reproduction costs including blueprinting, photographing, telecopying, mimeographing, photocopying and printing; express charges; commercial printing, binding, art Work and models; and, computer programming and data entry costs shall be included in the fixed price quote for the service that is provided.
- F. Authorized subcontract Services; Provided that the limitations set forth in the above paragraphs shall be applicable to such subcontract Services.
- G. Other direct costs, not listed above, may be billed if ERG and The Agencies have given prior approval.

2-5 Express Warranties for Services

- A. Contractor warrants that the Services shall in all material respects conform to the requirements of this Contract.
- B. Contractor warrants that the Services shall be performed in a timely and professional manner by qualified professional personnel with in-depth knowledge; and that the Services shall conform to the standards generally observed in the industry for similar Services.
- C. Contractor warrants that the Services shall be in compliance with all applicable laws, rules and regulations.
- D. Contractor warrants that the performance of the Services and any Software Provided is free from intentional Viruses, disabling code or other intentional programming defects. Prohibited

intentional programming defects include, but are not limited to, features such as “backdoor shutdown mechanisms”, “time bombs”, “automatic unauthorized connection to outside systems”, programming that responds to or Provides information to outside systems’ “pinging”, and features that can “retire”, “shut down”, “cripple” or “stop” the Software. Contractor further warrants that neither the Software alone or through contact with the Contractor is capable of electronic self-help that may deprive ERG and The Agencies of the use of the licensed Software.

- E. THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

2-6 Board of Ethics Disclosure Requirement

Pursuant to King County code 3.04.120, the Consultant shall file a Contractor Disclosure Form with the Board of Ethics and the King County Executive, attached hereto as Attachment M.

2-7 Changed Requirements

New Federal, State and County laws, regulations, ordinances, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors to comply with revised requirements as well.

2-8 Counterparts

This Contract may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Contract.

SECTION 3 - FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

This Contract shall be funded approximately three percent by the Federal Transit Administration (FTA). Neither the FTA nor the Federal Government shall be a party to any subagreement nor to any solicitations or request for Proposals. This Contract shall be subject to regulations contained in 49 Code of Federal Regulations (CFR) Part 18 and the applicable grant agreement between the County and the FTA. The following provisions include, in part, certain standard terms and conditions required by the U.S. Department of Transportation, whether expressly set forth in the following Contract provisions. All Contractual provisions required by the U.S. Department of Transportation, as set forth in FTA Circular 4220.1E, dated June 19, 2003, are hereby incorporated by reference as are the requirements of the Master Agreement between King County and the U.S. Department of Transportation, including all "flow down" provisions to third party contractors, sub-contractors and or suppliers. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any County requests that would cause the County to be in violation of the FTA terms and conditions.

3-1 Changes in Federal laws, Regulations, Policies and Administrative Practices

New federal laws, regulations, policies and administrative practices may be established after the date this Contract is established and may apply to this Contract. To achieve compliance with changing federal requirements, the Contractor agrees to accept all changed requirements that apply to this Contract and require Subcontractors comply with revised requirements as well.

3-2 Federal Changes

The Contractor agrees to comply with all applicable FTA regulations, policies, procedures and directives, including without limitation, those listed directly or by reference in the Master Agreement between the County and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to comply shall constitute a material breach of this Contract. 49 CFR Part 18.

3-3 No Federal Government Obligations to Third Parties

The Contractor agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Contractor or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance Provided by FTA. It is further agreed that the clause shall not be modified, except to identify the Subcontractor who shall be subject to its provisions.

3-4 Equal Employment Opportunity

In connection with the execution of this Contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor shall take affirmative action to ensure that the hiring of applicants and treatment of employees during employment is conducted without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of

compensation, and selection for training, including apprenticeship. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be Provided by the contracting officer setting forth the provisions of this non-discrimination clause.

Authorities: Executive Order 11246, as amended by Executive Order 11375; Title VII of the Civil Rights Act, as amended, 42 USC § 2000e; Federal transit laws at 49 USC § 5332; section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 USC § 623; section 102 of the Americans with Disabilities Act, as amended, 42 USC §§ 12101 et seq.; 29 CFR Part 1630; 41 CFR § 60-1.4.

3-5 Compliance With Section 504 Of The Rehabilitation Act

Of 1973, As Amended And The American With Disabilities Act Of 1990

The Contractor shall ensure that no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefit of, or be subjected to discrimination in connection with this Contract. 42 USC § 12112; 29 CFR Part 1630.

The Contractor shall complete a Disability Self-Evaluation Questionnaire for all programs and services offered by the Contractor (including any services not subject to this Contract) and shall evaluate its services, programs and employment practices for compliance with Section 504 of the Rehabilitation Act of 1973, as amended ("504"), and the Americans with Disabilities Act of 1990 ("ADA"). The Contractor shall complete a 504/ADA Disability Assurance of Compliance and within ten days after the bidder receives written notice of selection, submit it to the County the final two pages of 504/ADA (where signatures are required). Such Assurance of Compliance will be incorporated herein by reference.

3-6 Title VI Compliance

The Contractor shall comply with and shall ensure the compliance by all Subcontractors under this Contract with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and the regulations of the federal Department of Transportation, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act," 49 CFR Part 21, (hereinafter "Regulations") as they may be amended from time to time. The Federal Government and or the County has a right to seek judicial enforcement with regard to any matter arising under Title IV of the Civil Rights Act and implementing regulations. 49 CFR Part 21.19.

During the performance of this Contract, the Contractor, for itself, its assignees and successors-in-interest agrees as follows:

A. Nondiscrimination

The Contractor, with regard to the Work performed by it during the Contract, shall not discriminate on the grounds of race, color, creed, sex, disability, age or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

B. Solicitations for Subcontracts, Including Procurements of Materials and Equipment

In all solicitations either by competitive Proposal or negotiation made by the Contractor for Work to be performed under a subcontract, including procurements of materials or leases of equipment,

each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the regulations relative to nondiscrimination on the grounds of race, color, creed, sex, disability, age or national origin.

C. Information and Reports

The Contractor shall Provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. The Contractor shall maintain all required records for a least three (3) years after the County makes final payment and all other pending matters are closed. Where any information is required and it is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the County or the Federal Transit Administration, as appropriate, and shall set forth efforts made to obtain the information.

D. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the County shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

1. Withholding of payments to the Contractor under the Contract until the Contractor complies, and/or,
2. Cancellation, termination or suspension of the Contract, in whole or in part.

E. Incorporation of Provisions

The Contractor shall include the provisions of paragraphs A through E of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the regulations or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the County or the FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that, in the event the Contractor becomes involved in or is threatened with litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the County to enter into such litigation to protect the interests of the County, and in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor shall comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor shall comply with any implementing requirements FTA may issue.

3-7 Labor Provisions - Non-Construction Contracts

A. Overtime Requirements

No Contractor or Subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any Work week in which he or she is employed on such Work to Work in excess of forty (40) hours in such Work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such Work week. (29 CFR § 5.5(b)(1)).

B. Violation: Liability for Unpaid Wages: Liquidated Damages

In the event of any violation of the clause set forth in paragraph A of this section, the Contractor and any Subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of Work done under Contract for the District of Columbia or a territory, to such district or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of paragraph A of this section in the sum of ten (\$10) dollars for each calendar Day on which such individual was required or permitted to Work in excess of the standard Work week of forty (40) hours without payment of the overtime wages required by paragraph A of this section. (29 CFR § 5.5(b)(2)).

C. Withholding for Unpaid Wages and Liquidated Damages

The Department of Transportation or the County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of Work performed by the Contractor or Subcontractor under any such Contract or any other federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or Subcontractor for unpaid wages and liquidated damages as Provided in paragraph B of this section. (29 CFR § 5.5(b)(3)).

D. Payrolls and Basic Records

The Contractor or Subcontractor shall maintain payrolls and basic payroll records during the course of the Work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made and actual wages paid. Further, the records to be maintained under this paragraph shall be made available by the Contractor or Subcontractor for inspection, copying or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or Subcontractor shall permit such representatives to interview employees during working hours on the job. (29 CFR § 5.5(c)).

E. Subcontracts

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through E of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in paragraphs A through E of this section. (29 CFR § 5.5(b)(4)).

3-8 Cargo Preference - Use of U.S. Flag Vessels

In the event that ocean shipment or international air transportation is required for any equipment, material or commodities pursuant to this Contract, the Contractor shall:

- A. Utilize privately owned United States flag commercial vessels to ship at least fifty (50%) percent of the gross tonnage involved, computed separately for dry bulk carriers, dry cargo liners and tankers, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

- B. Furnish within twenty (20) working Days following the date of loading for shipments originating within the United States, or within thirty (30) working Days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph A of this section, to the County, through the prime Contractor in the case of Subcontractor bills-of-lading, and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590, marked with appropriate identification of the project.
- C. Insert the substance of the provisions of this section in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46 USC § 1241; 46 CFR Part 381.

3-9 Fly America

The Contractor agrees to utilize United States flag air carriers to the extent such carriers Provide the air transportation needed, or accomplish the Contractor's mission. The Contractor agrees to utilize United States flag air carriers even though comparable or a different kind of service can be Provided at less cost by a foreign air carrier, a foreign air carrier can be paid for in excess foreign currency, unless United States flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service with a U.S. flag air carrier was not available or why it was necessary to use a foreign carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation. 49 USC § 40118; 41 CFR Part 301-310.

3-10 Audit and Inspection of Records

In the case of all negotiated contracts and contracts for construction, reconstruction or improvement of facilities and equipment, which were entered into under other than competitive Proposal procedures, Contractor agrees that the County, the Comptroller General of the United States or any of their duly authorized representatives, shall, for the purpose of audit and examination be permitted to inspect all Work, materials, payrolls, and other data and records with regard to the project, and to audit the books, records and accounts with regard to the project. Further, Contractor agrees to maintain all required records for at least three (3) years after the County makes final payment and all other pending matters are closed.

3-11 FTA Protest Procedures

Contractors are hereby notified that if this Contract is funded in whole or in part by the Federal Department of Transportation, the Federal Transit Administration (FTA) may entertain a protest that alleges that the County failed to have or follow written protest procedures. Proposers shall file a protest with the FTA not later than 5 working Days after the County renders a final decision or 5 working Days after the Contractor knows or has reason to know that the County has failed to render a final decision. The protesting party shall notify the County if it has filed a protest with the FTA. After 5 Days, the County shall confirm with FTA that FTA has not received a protest. Protests to the FTA shall be filed in accordance with FTA Circular 4220.1E (as periodically Updated).

The County shall not award a Contract for 5 working Days following its decision on a Proposal protest or while a protest to the FTA is pending unless the County determines that: (1) the items to be procured are urgently required; (2) delivery of performance shall be unduly delayed by failure to make the award

promptly; or (3) failure to make prompt award shall otherwise cause undue harm to the County or the Federal Government.

3-12 Privacy

Should the Contractor, or any of its Subcontractors, or their employees administer any system of records on behalf of the Federal Government, the Privacy Act of 1974, 5 USC § 552a, imposes information restrictions on the party administering the system of records.

For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, the recipient and any contractors, third party contractors, Subcontractors and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Contract shall make this Contract subject to termination.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract that involve the design, development, operation, or maintenance of any system of records on individuals subject to the Act.

3-13 Access Requirements for Individuals with Disabilities

The County and contractors are required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

- A. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37;
- B. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities receiving from Federal Financial Assistance," 49 CFR Part 27;
- C. U.S. Department of Transportation regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 CFR Part 38;
- D. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR Part 35;
- E. U.S. Department of Justice regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR Part 36;
- F. U.S. General Services Administration regulations, "Construction and Alteration of Public Buildings," 41 CFR Subpart 101-19;
- G. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 CFR Part 64, Subpart F; and
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR Part 609.

3-14 Interest of Members of or Delegates of Congress

Pursuant to 41 USC § 22, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.

3-15 Certification Regarding Debarment, Suspension and Other Responsibility Matters

By signing and submitting this Contract, the Contractor, is providing the signed certification set out below.

The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government and County, may pursue available remedies, including suspension and/or debarment.

The Contractor shall provide immediate written notice to County if at any time the Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. You may contact County for assistance in obtaining a copy of those regulations.

The Contractor agrees by signing this Contract, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the County.

The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.

Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under Paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, County may pursue available remedies including suspension and/or debarment. 49 CFR Part 29.

3-16 Subcontractors' Certification Regarding Debarment, Suspension or Ineligibility

By submitting a Proposal for this Contract, the Contractor agrees that it shall not knowingly enter into any subcontract exceeding \$100,000 with an entity or Person who is debarred, suspended, or who has been

declared ineligible from obtaining federal assistance funds; and shall require each Subcontractor to complete the certification Provided in Attachment L.

Each subcontract, regardless of tier, shall contain a provision that the Subcontractor shall not knowingly enter into any lower tier subcontract with a Person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds, and a provision requiring each lower-tiered Subcontractor to Provide the certification set forth in Attachment L.

The Contractor shall require each Subcontractor, regardless of tier, to immediately Provide written notice to the Contractor if at any time the Subcontractor learns that its, or a lower-tier certification was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor may rely upon the certifications of the Subcontractors unless it knows that a certification is erroneous. The Contractor's knowledge and information regarding any Subcontractor is not required to exceed that which is normally possessed by a prudent Person in the ordinary course of business.

3-17 Disclosure of Lobbying Activities

Proposals in excess of \$100,000 require Attachment I, "Certification Regarding Lobbying," and Attachment J, "Disclosure of Lobbying Activities" (if appropriate), be completed and submitted to the County with the Proposal, as required by 49 CFR Part 20, "New Restrictions on Lobbying."

The Contractor certifies that it shall not and has not used Federal appropriated funds to pay any Person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment, 31 USC § 1352. The Contractor shall disclose the name of any registrant under the Lobbying Disclosure Act of 1995, codified at 2 USC § 1601 *et seq.*, who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Contract, grant or award covered by 31 USC § 1352. Such disclosures are to be forwarded to the County.

The Contractor shall include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

3-18 Anti-Kickback

The County and contractors are required to comply with the Anti-Kickback Act of 1986, 41 USC §§ 51 *et seq.* Under state and federal law, it is a violation for County employees, Proposers, contractors or Subcontractors to accept or offer any money or benefit as a reward for favorable treatment in connection with the award of a Contract or the purchase of goods or Services.

"Kickback" as defined by Federal Acquisition Regulation (FAR) 52.203-7, and 41 USC § 52(2), means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is Provided directly or indirectly to any prime Contractor, prime Contractor employee, Subcontractor or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime Contract or in connection with a subcontract relating to a prime Contract.

3-19 False or Fraudulent Statements or Claims

The Contractor acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the County in connection with this project, the County reserves the right to pursue the procedures and impose on the recipient the penalties of 18 USC § 1001, 31 USC §§ 3729 and 3801 *et seq.*, and/or 49 USC § 5307(n)(1), as may be appropriate. The terms of Department of

Transportation regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, are applicable to this project.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

3-20 Conservation

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the State Energy Conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321 *et seq.*, and 49 CFR Part 18.

The Contractor agrees to include this clause in all subcontracts awarded under this Contract.

3-21 Air Pollution

The Contractor and suppliers may be required to submit evidence to the Project Manager that the governing air pollution criteria shall be met. This evidence and related documents shall be retained by the manager for on-site examination by FTA.

3-22 Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Environmental Protection

The Contractor agrees to comply with the applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321, *et seq.*, consistent with Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 USC § 4321 note. FTA statutory requirements on environmental matters at 49 USC § 5324(b); Council on Environmental Quality regulations on compliance with the National Environmental Policy Act of 1969, as amended, 42 USC § 4321 *et seq.* and 40 CFR Part 1500, *et seq.*; and joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 CFR Part 771 and 49 CFR Part 622.

B. Air Quality

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to section 306 of the Clean Air Act, as amended, 42 USC §§ 7401, 7414, *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to include this clause in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance Provided by FTA.

C. Clean Water

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §§ 1251, 1368, *et seq.* The Contractor agrees to report each violation to the County and understands and agrees that the County shall, in turn, report each violation as required to assure notification to FTA and the appropriate Environmental Protection Agency (EPA) Regional Office.

The Contractor agrees to protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 USC §§ 300h *et seq.*

The Contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance Provided by FTA.

D. Use of Public Lands

The Contractor agrees that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the federal, state or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used for the Project unless the FTA makes the specific findings required by 49 USC § 303.

E. Historic Preservation

The Contractor agrees to assist the Federal Government in complying with section 106 of the National Historic Preservation Act, as amended, 16 USC § 470f, Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 USC § 470 note, and the Archaeological and Historic Preservation Act of 1974, as amended, 16 USC §§ 469a-1 *et seq.* involving historic and archaeological preservation as follows:

1. The Contractor agrees to consult with the State Historic Preservation Officer about investigations to identify properties and resources listed in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, in accordance with Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 CFR Part 800, and notifying FTA of those properties so affected.
2. The Contractor agrees to comply with all federal requirements to avoid or mitigate adverse effects on those historic properties.

F. Mitigation of Adverse Environmental Effects

The Contractor agrees that if the Project should cause adverse environmental effects, the Contractor shall take all reasonable steps to minimize those effects in accordance with 49 USC § 5324(b), and all other applicable federal laws and regulations, specifically, the procedures of 23 CFR Part 771 and 49 CFR Part 622.

G. Energy Conservation

The Contractor agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 USC §§ 6321, *et seq.*

3-23 Termination Provisions Required

All contracts and subcontracts in excess of \$10,000 shall contain contractual provisions or conditions that allow for termination for cause and convenience by the County including the manner by which it shall be effected and the basis for settlement.

(Required by FTA Circular 4220.1E § 15.b.).

3-24 Breach Provisions Required

All contracts in excess of \$100,000 shall contain contractual provisions or conditions that shall allow for administrative, contractual, or legal remedies in instances where the Contractor violates or breaches the terms of this Contract, including sanctions and penalties as may be appropriate. The Contractor agrees to include this provisional requirement in all subcontracts in excess of \$100,000 awarded under this Contract. (Required by FTA Circular 4220.1E, § 15.a.).